
IN THE MATTER OF
HOFFMANN UPHOLSTERERS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-1646. Complaint, Dec. 8, 1969—Decision, Dec. 8, 1969

Consent order requiring a Washington, D.C., furniture upholstering firm to cease using bait advertising, making false pricing and savings claims, failing to keep adequate price records, making deceptive limited offers and false guarantees, implying that certain of its furniture is imported, failing to refund down-payments, and failing to disclose its sales contracts may be sold to a finance company.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Hoff-

mann Upholsterers, Inc., a corporation, and Zoltan A. Hoffmann and Lillian Hoffmann, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Hoffmann Upholsterers, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its principal office and place of business located at 2447 18th Street, NW., in the city of Washington, D.C.

Respondents Zoltan A. Hoffmann and Lillian Hoffmann are individuals and are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of new and used furniture and other merchandise and of furniture repair and upholstering services to the public at retail.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, their said merchandise and articles left for repair or upholstering, to be shipped from their place of business in the District of Columbia to purchasers thereof located in various other States of the United States and in the District of Columbia, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said merchandise and services in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their merchandise and services, the respondents have made, and are now making, numerous statements and representations in advertisements inserted in newspapers and promotional materials of which the following are typical and illustrative but not all inclusive thereof:

SALE

UNCLAIMED

Everything in Store Reduced Player piano, \$95; Fr. Prov. full size cane back bed, \$25; Fireplace, \$35; chaise lounge, \$40 * * *

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FURN.

Italian Provincial	Reg.	Now
Coffee Tables -----	\$59	\$20
Club Chairs -----	\$79	\$26
Table Lamps 31" high ----	\$40	\$12
Side Chairs -----	\$80	\$60
Armchairs -----	\$135	\$100

* * * * *

MODEL HOME STYLE FURNITURE SALE * * *

SAVE 30% to 58%

From Prices You

Would Normally

Pay in Stores.

* * * * *

Reupholstered

SOFA or 2 CHAIRS

INCLUDING LABOR AND

MATERIALS—NEW SPRINGS

AND FILLING WHERE

NECESSARY AS LOW AS \$89—PICK-UP

AND DELIVERY—3-YEAR GUARANTEE.

Danish Modern 3 Complete Rooms \$297

Bedroom, Living Room, Dining Room.

PAR. 5. By and through the use of the above-quoted statements and representations, and others of similar import and meaning but not expressly set out herein, the respondents have represented, and are now representing, directly or by implication, that:

1. The offers set forth in said advertisements are bona fide offers to sell the advertised merchandise at the prices and on the conditions stated.

2. The respondents have sufficient quantities of the advertised merchandise available for purchase.

3. During the period of the advertised "Sale," or any other period described by another word or words of similar import and meaning, the advertised price of any item of merchandise represents a reduction from the price at which respondents have made a bona fide offer to sell or have sold said merchandise on a regular basis for reasonably substantial period of time in the recent, regular course of their business.

4. Purchasers of merchandise advertised under the phrase "SAVE 30% to 58%," or terms of similar import and meaning, will realize a savings of the stated percentage amount from the actual prices at which substantial sales of such merchandise were made in respondents' trade area.

5. The higher prices, accompanied by the word "Reg." or other word or words of similar import and meaning, are the prices at

which the advertised merchandise is being offered for sale or sold by the respondents in good faith for a reasonably substantial period of time in the recent, regular course of their business. Purchasers of such merchandise will save an amount equal to the difference between respondents' higher selling prices and the corresponding advertised lower selling prices.

6. The represented reduced prices are offered only during the limited period of the sale and such reduced prices will be returned to respondents' presale bona fide offering prices or to some other substantially higher amounts immediately after completion of the sale period.

7. Furniture reupholstered by respondents is unconditionally guaranteed for a period of three years.

8. Furniture advertised under the phrase "Danish Modern," or other words of similar import and meaning, is manufactured in the country of Denmark.

PAR. 6. In truth and in fact:

1. The offers set forth in said advertisements are not bona fide offers to sell the advertised merchandise at the prices and on the conditions stated, but are made for the purpose of attracting prospective purchasers into respondents' place of business. When prospective purchasers enter respondents' store, respondents' salesmen make no effort to sell the advertised merchandise. In addition, in some instances the salesmen refuse to assist prospective purchasers in locating the advertised merchandise. In other instances, they display merchandise represented as the advertised merchandise that is of such poor appearance and condition the prospective purchasers reject it on sight. Concurrently, the salesmen show other articles of merchandise selling at higher prices than the advertised merchandise which by visual comparison demeans and disparages the advertised merchandise. By such and other tactics, respondents discourage the sale of the advertised merchandise and are successful in obtaining sales of the higher priced merchandise.

2. Respondents, in a number of instances, fail to have sufficient quantities of the advertised merchandise on hand to meet reasonably anticipated demands.

3. During the period of the advertised "Sale," or any period described by another word or words of similar import and meaning, the advertised price of any item of merchandise does not represent a reduction from the price at which respondents have made a bona fide offer to sell or have sold said merchandise on a regu-

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lar basis for a reasonably substantial period of time in the recent, regular course of their business.

4. Purchasers of merchandise advertised under the phrase "SAVE 30% to 58%" or terms of similar import and meaning, will not realize a savings of the stated percentage amount from the actual prices at which substantial sales of such merchandise were made in respondents' trade area.

5. The higher prices, accompanied by the word "Reg." or other word or words of similar import and meaning, are not the prices at which the advertised merchandise is being offered for sale or sold by the respondents in good faith for a reasonably substantial period of time in the recent, regular course of their business; and purchasers thereof, will not realize a savings equal in amount to the difference between respondents' higher selling prices and the corresponding advertised lower selling prices.

6. The prices represented as being reduced are not offered only during the limited period of the sale. Such reduced prices will not be returned to respondents' pre-sale bona fide prices or to some other substantially higher amounts immediately after completion of the sale period.

7. Furniture reupholstered by respondents is not unconditionally guaranteed for a period of three years. Such guarantees as may be provided are subject to numerous conditions and limitations not disclosed in respondents' advertising. Furthermore, respondents have failed to disclose in their advertising the nature and extent of the guarantee, the identity of the guarantor and the manner in which the guarantor will perform thereunder.

8. Furniture advertised under the phrase "Danish Modern," or words of similar import and meaning, is not manufactured in the country of Denmark.

Therefore, the statements and representations set forth in Paragraphs Four and Five hereof were and are false, misleading and deceptive.

PAR. 7. In the further course and conduct of their business as aforesaid, respondents have engaged in and are now engaging in the following unfair and deceptive acts and practices:

1. Respondents, in a substantial number of instances, require purchasers of their merchandise and services to sign a purchase agreement containing the following provision: "*** I hereby agree that no refund or cancellation will be made on any orders. Deposit required on all orders***." Said purchasers are required in such instances to tender all or a substantial portion of the purchase price at the time of the sale, with the balance, if

any, to be paid upon delivery of the merchandise or completion of the services. However, in some instances, respondents have failed to perform their contractual obligations according to the purchase agreement by unreasonably delaying in delivering merchandise, or by substituting merchandise for goods specified in the agreement, or by failing to perform upholstery or other services according to the agreed terms. When respondents have failed to perform their contractual obligations pursuant to the purchase agreement, respondents in some instances have refused to return deposits to customers.

2. Respondents have failed to disclose to purchasers of their merchandise the material fact that promissory notes, or any other instruments of indebtedness, executed by said purchasers may, at the option of respondents, be negotiated or assigned to a finance company to which such purchasers will be indebted and against which certain defenses or claims may not be asserted.

PAR. 8. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and now are, in substantial competition, in commerce, with corporations, firms and individuals in the sale of merchandise and services of the same general kind and nature as that sold by respondents.

PAR. 9. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public concerning the savings available to them on respondents' merchandise or services and, more generally, to mislead them into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' merchandise or services by reason of said erroneous and mistaken belief.

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished there-

after with a copy of a draft of complaint which the Bureau of Deceptive Practices proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Hoffmann Upholsterers, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its office and principal place of business located at 2447 18th Street, N.W., in the city of Washington, D.C.

Respondents Zoltan A. Hoffmann and Lillian Hoffmann are officers of said corporation and their address is the same as that of said corporation.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Hoffmann Upholsterers, Inc., a corporation, and its officers, and Zoltan A. Hoffmann, individually and as an officer of said corporation, and Lillian Hoffmann, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any

corporate or other device, in connection with the advertising, offering for sale, sale, and distribution of new and used furniture or any other merchandise and of furniture repair and upholstering services or any other service, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that merchandise or services are offered for sale when such offers are not bona fide offers to sell said merchandise or services.

2. Using any advertising, sales plan or procedure involving the use of false, misleading or deceptive statements or representations to encourage the sale of other merchandise or services at higher prices.

3. Making representations purporting to offer merchandise or services for sale when the purpose of the representations are not to sell the offered merchandise or services but to encourage the sale of other merchandise or services at higher prices.

4. Disparaging the advertised merchandise or services, or discouraging in any manner the purchase of any merchandise or services.

5. Advertising any item of merchandise for sale when such items of merchandise are not available in sufficiently substantial quantities to meet reasonably anticipated demands: *Provided however*, That items available only in limited supply may be advertised, if such advertising clearly and conspicuously discloses the number of units of the advertised merchandise available.

6. Using the word "Sale" or any other word or words of similar import and meaning unless the price of such merchandise or services being offered for sale constitutes a reduction, in an amount not so insignificant as to be meaningless, from the actual bona fide price at which such merchandise or services were sold or offered for sale to the public on a regular basis for a reasonably substantial period of time in the recent, regular course of their business.

7. Using the word "Save" or any other word or words of similar import and meaning in conjunction with a stated dollar or percentage amount of savings, unless the stated dollar or percentage amount of savings actually represents the difference between the offering prices and the actual prices at

which substantial sales of the same merchandise or services have been made in respondents' trade area and unless respondents have in good faith conducted a market survey which establishes the validity of the trade area prices.

8. Using the word "Reg.," or any other word or words of similar import and meaning, to refer to any price amount which is in excess of the price at which such merchandise or services have been sold or offered for sale in good faith by respondents for a reasonably substantial period of time in the recent, regular course of their business and unless respondents' business records establish that said amount is the price at which such merchandise or services have been sold or offered for sale in good faith by respondents for a reasonably substantial period of time in the recent, regular course of their business.

9. (a) Representing, in any manner, that by purchasing any of said merchandise or services, customers are afforded savings amounting to the difference between respondents' stated price and respondents' former price unless such merchandise or services have been sold or offered for sale in good faith at the former price by respondents for a reasonably substantial period of time in the recent, regular course of their business.

(b) Representing, in any manner, that by purchasing any of said merchandise or services, customers are afforded savings amounting to the difference between respondents' stated price and a compared price for said merchandise or services in respondents' trade area unless a substantial number of the principal retail outlets in the trade area regularly sell said merchandise or services at the compared price or some higher price.

(c) Representing, in any manner, that by purchasing any of said merchandise or services, customers are afforded savings amounting to the difference between respondents' stated price and a compared value price for comparable merchandise or services, unless substantial sales of merchandise or services of like grade and quality are being made in the trade area at the compared price or a higher price and unless respondents have in good faith conducted a market survey or obtained a similar representative sample of prices in their

trade area which establishes the validity of said compared price and it is clearly and conspicuously disclosed that the comparison is with merchandise or services of like grade and quality.

10. Misrepresenting, in any manner, the amount of savings available to purchasers or prospective purchasers of respondents' merchandise or services at retail.

11. Failing to maintain adequate records:

(a) Which disclose the facts upon which any savings claims, including former pricing claims and comparative value claims, and similar representations of the types described in paragraphs 6-10 of this order are based, and

(b) From which validity of any savings claims, including former pricing claims and comparative value claims, and similar representations of the type described in paragraphs 6-10 of this order can be determined.

12. Representing, directly or by implication, that any offer is limited in point of time or restricted in any manner, unless the represented limitation or restriction is actually imposed and in good faith adhered to by respondents.

13. Representing, directly or by implication, that furniture reupholstered by respondents is guaranteed, unless the nature, conditions and extent of the guarantee, identity of the guarantor and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed, and unless all such guarantees are in fact honored and the terms thereof promptly fulfilled.

14. Representing, directly or by implication, by the use of the words "Danish Modern" or any other word or words of similar import and meaning, or in any other manner, that domestically manufactured furniture is manufactured in the country of Denmark; or misrepresenting in any other manner the country of origin of respondents' merchandise.

15. Failing to refund in cash any deposit or down payment on a purchase or on an agreement to purchase or to perform a service when respondents:

(a) Fail to deliver the merchandise or complete the services within the agreed time period;

(b) Fail to deliver the ordered merchandise without unauthorized substitutions;

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(c) Fail to perform upholstering or any other service according to the terms of the purchase agreement; or

(d) Fail to perform in any other manner.

16. Failing to orally disclose prior to the time of sale, and in writing on any conditional sale contract, promissory note, or any other instrument of indebtedness, executed by a purchaser and with such conspicuousness and clarity as is likely to be observed and read by such purchaser, that:

Any such instrument, at respondents' option and without notice to the purchaser, may be discounted, negotiated or assigned to a finance company or any other third party to whom the purchaser will be thereafter indebted and against whom the purchaser's claims or defenses may not be available.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.
